

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 26 OF 2006

Shri Rejo Raphael,
S/o M. J. Raphael,
R/o Maria Nagar,
Near Railway Gate,
Sarjapur Road,
Karmalaram,
Post Bangalore.

... Appellant

versus

State,
through Public Prosecutor.

... Respondent

Ms. Caroline Collasso, Advocate for the Appellant.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 22ND NOVEMBER, 2007.

ORAL JUDGMENT

Heard Ms. Caroline Collasso, learned Counsel on behalf of the accused and Ms. Winnie Coutinho, learned Public Prosecutor on behalf of the Respondent.

2. The accused who was found in possession of 1.17 kgs. of ganja has been sentenced under Section 20(b)(ii)(B) of the N.D.P.S. Act, 1985 to undergo R.I. for a term of 3 years and to pay a fine of Rs.15,000/- in default to undergo R.I. for a further term of 2 months.

3. The learned Counsel on behalf of the accused does not wish to contest the conviction of the accused but submits that the sentence imposed upon the accused is rather severe considering the age of the accused and the quantity of ganja found with him. The learned Counsel on behalf of the accused submits that on the date of the incident the accused was 22 years of age. The learned Counsel further submits that the accused was arrested on 28-11-2003 and suffered detention till the accused was released on bail on 24-9-2004. The learned Counsel further submits that presently the accused is employed with SKDM as a Marketing Executive and in case the accused is required to undergo the remaining sentence, the same will come in the way of his employment and the accused will loose his newly acquired job. In support of this submission, the learned Counsel has placed a letter dated 15-2-2007 issued by the said SKDM which shall be placed on record and marked "X" for identification.

4. The learned Public Prosecutor on behalf of the Respondent, upon instructions of the I.O., who is present, has no objection in case the sentence imposed against the accused is reduced to the period of detention undergone by the accused i.e. the period of 9 months 26 days. Admittedly, ganja in quantity of less than 1000 gms. has been declared to be small

quantity and the punishment provided is R. I. for a term which may extend to 6 months, or with fine, which may extend to Rs.10,000/-, or with both. Admittedly, the accused was found with 1.17 kgs. which is little over a small quantity but much less than commercial quantity and for which punishment provided is R. I. for a term which may extend to 10 years and fine which may extend to Rs.1,00,000/-.

5. Sentence should always be proportionate to the crime. Considering the quantity involved, the age of the accused as well as the employment now secured by him, it would be in the interest of justice in case the period of detention undergone by the accused from 28-11-2003 to 24-9-2004 is considered as substantive sentence imposed upon the accused. On behalf of the accused it is stated that fine of Rs.15,000/- is paid.

6. To the above extent, the appeal is partly allowed and the sentence imposed upon the accused accordingly modified. In other words, the accused will not be required to undergo any further sentence. In case the fine of Rs.15,000/- is not paid within a period of 3 weeks from today, the learned Special Judge shall execute the sentence imposed for default of payment of fine. On payment of fine the bail bonds of the accused shall stand discharged.

N. A. BRITTO, J.

RD